IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7265 OF 2004

Subhadra S. Mishra
M/s.Juhu Milan restaurant
and Bar (Mid Night) .. Petitioners

Versus

The Commissioner of Police
Greater Mumbai & Anr. .. Respondents.

Mrs.V.B.Thadani for petitioner
Mr.D.A.Patil, A.G.P. for State.

CORAM : A.M.KHANWILKAR, J.

DATE : SEPTEMBER 1, 2004.

P.C.

1. Heard the learned Counsel for parties.

Rule. Rule made absolute forthwith by consent. Mr.Patil waives notice for respondents. As a short question is involved the petition is taken up for final disposal by consent.

2. The principal grievance in this petition is that the petitioner has preferred an appeal against the order passed by the Dy.Commissioner of Police dated 12th August 2004 before the appellate authority, but neither the appeal is being heard nor the prayer for interim relief is being considered by the said authority. It is reported that the appellate authority is of the view that because of the coming into force of election code of conduct, hearing of appeals will have to be deferred. I see no reason to accept such a plea on behalf of the appellate authority which is obliged to discharge its statutory duty of entertaining and disposing of the appeals against the order, such as the one passed by the Dy.Commissioner of Police in the present case.

Assuming that the concerned Minister is not in a position to hear the appeal, there is no inhibition in delegating the authority to the Principal Secretary of the concerned department who in turn shall decide the appeal preferred by the petitioner. It is, however, left to the discretion of the appropriate authority to take decision in this behalf. In any case, the appellate authority cannot defer the hearing of the matter on the specious plea that due to coming into force of election code of conduct, hearing cannot proceed. That stand is impermissible. In these circumstances, appropriate authority is directed to decide the appeal preferred by the petitioner as expeditiously as possible and preferably within four weeks from today. The petitioners to appear before the Principal Secretary of the concerned department on 13th September 2004, who in turn shall either proceed to decide the appeal itself or place the matter before the appropriate

authority as may be advised to be heard on the same day or such other convenient date subject to, however, that the appeal is to be finally disposed of within four weeks from today.

3. At this stage, the learned Counsel for the petitioner submits that till the appeal is finally decided, the petitioner be granted liberty to continue with the present business activities and pass interim orders as was granted by this Court on May 18, 2001. It is not possible to accede to this request. Interim order dated 18th August 2001 directs that till the application preferred by the petitioner for performance licence is heard and decided and for a period of three weeks thereafter from the communication of the order passed by the licensing authority, if adverse to the petitioner, respondents, their servants, agents and officers are restrained from preventing the

petitioner from carrying on the hotel business. However, with utmost respect to the observations in the earlier order, such a course, in my opinion, is not permissible, especially when the licence is yet to be issued in favour of the petitioner. Whereas Petitioner would be entitled to legitimately carry on the business only if necessary licence was issued by the concerned authorities. Petition is disposed of with the above observations.

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